

ORDINANCE NO. _____

1 AN ORDINANCE amending Chapter 4.66 of the Lincoln Municipal Code to
2 redesignate the “City Audit Advisory Board” as the “City Performance Audit Committee” by
3 amending Section 4.66.020 to revise and delete current definitions; amending Section 4.66.030 to
4 establish said Committee and its membership; adding a new section numbered 4.66.035 to provide
5 for the members’ term of service and conditions for removal from office; amending Section 4.66.040
6 to define the duties and powers of the Committee; amending Section 4.66.050 to provide that the
7 Committee meet regularly on at least a quarterly basis; amending Section 4.66.070 to simplify
8 conflict of interest language; amending Sections 4.66.060, 4.66.090, 4.66.100, 4.66.110, and
9 4.66.120 to replace references to ‘Board’ with ‘Committee’; and repealing Sections 4.66.020,
10 4.66.030, 4.66.040, 4.66.050, 4.66.060, 4.66.070, 4.66.090, 4.66.100, 4.66.110, and 4.66.120 of the
11 Lincoln Municipal Code as hitherto existing.

12 WHEREAS, a performance auditing committee should be established which is
13 directly answerable to the City Council.

14 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

15 Section 1. That the title of Chapter 4.66 of the Lincoln Municipal Code is hereby
16 amended to read as follows: City Performance Audit Advisory Board ~~Committee~~.

17 Section 2. That Section 4.66.020 of the Lincoln Municipal Code be amended to read
18 as follows:

19 **4.66.020 Definitions.**

20 For the purpose of this chapter, the following words shall have the following meanings:

1 **Auditee** shall mean the City office, department, agency, or other governmental organization
2 subject to a City audit who which is the object of a contract audit as specified in the City's contract
3 with the contract auditor.

4 **Board Committee** shall mean the City ~~Audit Advisory Board~~ Performance Audit Committee
5 unless otherwise specified.

6 **Board Committee audit report** shall mean the written report created by the ~~Board~~
7 Committee which shall include the final audit report, any written response by the auditee, a separate
8 listing, if any, of irregularities or failures to comply with legal or administrative policies, and the
9 ~~Board's~~ Committee's recommendations.

10 **Contract administrator** shall mean the City official charged with administering the contract
11 with the contract auditor. The Director of Finance shall be the contract administrator, provided,
12 however, if the Finance Department is specifically named in the contract as the auditee, the Mayor
13 shall designate another City employee as Contract Administrator for that contract audit.

14 **Contract audit** shall mean an audit performed pursuant to this chapter and shall be any one
15 or combination of a financial audit, a performance audit, an internal audit, or operational review.

16 **Contract auditor** shall mean the person with whom the City contracts at the direction of the
17 Committee to perform a contract audit under this chapter.

18 **Custodian of records** shall mean the City Clerk.

19 **Final audit report** shall mean the report created by the contract auditor following his or her
20 audit. No working papers shall be attached or otherwise disseminated by the contract auditor as part
21 of a final audit report or otherwise.

22 **Financial audit** shall mean an audit designed to address questions of accounting and
23 reposting of financial transactions, including commitments, authorizations, and receipt and
24 disbursement of funds. The purpose is to verify that sufficient controls over cash and cash-like assets

1 exist and that adequate processes controls over the acquisition and use of resources exist. Financial
2 audits shall be conducted in accordance with auditing standards generally accepted in the United
3 States of America and the standards applicable to financial audits contained in the Generally
4 Accepted Government Auditing Standards (GAGAS) maintained by the federal Government
5 Accountability Office (GAO). For purposes of this chapter, financial audit, does not include the
6 external independent audit required in Article IV, Section 8 of the City Charter.

7 **Internal audit** shall mean an independent appraisal of operations to assess the effectiveness
8 of internal administrative and accounting controls and help ensure conformance with managerial
9 policies. Internal audits shall be conducted in accordance with the Standards for the Professional
10 Practice of Internal Auditing (SPPIA) as promulgated by the Institute of Internal Auditors.

11 **Operational review** shall mean an objective and systematic examination of evidence to
12 evaluate the City's conformity with plans and resource allocations, organizational structure,
13 operating procedures, process controls, and to evaluate whether the auditee is operating efficiently,
14 economically, and effectively to maximize the desired results.

15 **Performance audit** shall mean an objective and systematic examination of evidence for the
16 purpose of providing an independent assessment of the performance of a government organization,
17 program, activity, or function in order to provide information to improve public accountability and
18 facilitate decision making by parties with responsibility to oversee or initiate corrective action.
19 Performance audits shall be conducted in accordance with the Generally Accepted Government
20 Auditing Standards (GAGAS) maintained by the federal Government Accountability Office (GAO).

21 ~~**Selection committee** shall mean the Chair of the City Council and the two City Council~~
22 ~~members who serve on the Internal Auditing Review Committee. In the event the Council Chair is~~
23 ~~one of the two City Council representatives on the Internal Auditing Review Committee, the third~~
24 ~~member of the selection committee shall be a City Council member as designated by the Chair of~~
25 ~~the City Council. Two affirmative votes are required for action.~~

26 **Working papers** shall mean those documents containing evidence to support the contract
27 auditor's findings, opinions, conclusions and judgments.

28 Section 3. That Section 4.66.030 of the Lincoln Municipal Code be amended to read
29 as follows:

1 **4.66.030 City Performance Audit Advisory Board Committee Established; Membership;**
2 **Term; Removal.**

3 The City ~~Audit Advisory Board (Board)~~ Performance Audit Committee (Committee) is
4 hereby established. The ~~Board~~ Committee shall consist of ~~six~~ five members and shall be comprised
5 as follows:

6 (a) ~~Three~~ Two members shall be appointed by the Mayor. At least one of the Mayor's
7 ~~three~~ two appointees shall hold an active license as a certified public accountant in Nebraska, or be
8 a certified internal auditor, or have experience showing specialized knowledge in the area of
9 conducting performance audits. The Mayor's appointees shall not share the same political party
10 registration.

11 (b) ~~Three members shall be appointed by the City Council. At least one of the City~~
12 ~~Council's three appointees shall hold an active license as a certified public accountant in Nebraska,~~
13 ~~or be a certified internal auditor, or have a degree, certificate, or experience showing specialized~~
14 ~~knowledge in the area of conducting performance audits. The Committee shall include three City~~
15 ~~Council members. The City Council Committee members shall be elected by a majority vote of the~~
16 ~~City Council. No more than two City Council Committee members shall share the same political~~
17 ~~party registration when elected to the Committee.~~

18 ~~— The term of service on the Board shall be three years. Initially, one of the Mayor's and City~~
19 ~~Council's appointees shall serve for one year; one of the Mayor's and City Council's appointees shall~~
20 ~~serve for two years; and one of the Mayor's and City Council's appointees shall serve for three years.~~
21 ~~The Mayor and City Council shall designate, upon making the appointments, which of their~~
22 ~~respective appointees will fill which length initial term. Upon expiration of the initial terms,~~

1 appointments thereafter shall be for a period of three years. No person shall serve greater than three
2 terms on the Board.

3 ~~Board members may be removed from office by their appointing entity (Mayor or City~~
4 ~~Council) for malfeasance or nonfeasance of office or for any cause that renders the member~~
5 ~~ineligible to office or incapable or unfit to discharge the duties thereof. Violation of Section~~
6 ~~4.66.090(b) of the Lincoln Municipal Code, or any other provision of this chapter, shall be grounds~~
7 ~~for immediate removal from the Board.~~

8 Section 4. That Chapter 4.66 of the Lincoln Municipal Code be amended by adding
9 a new section numbered 4.66.035 to read as follows:

10 **4.66.035 Term and Removal.**

11 (a) City Council members of the Committee shall serve a term of two years with no limit
12 on the number of terms.

13 (b) The term of service for outside members of the Committee shall be three years.
14 Initially, one of outside members shall serve for two years, and one of the outside members shall
15 serve for three years. The Mayor shall designate, while making the appointments, the initial term
16 lengths of the respective appointees. Upon expiration of the initial terms, appointments thereafter
17 shall be for a period of three years. No outside member shall serve more than six consecutive years
18 on the Committee.

19 (c) The Committee shall elect a chair from the City Council members of the Committee.
20 The chair shall serve for a one-year term. Successive terms by the chair are permitted.

21 (d) Committee members may be removed from office by a majority vote of the City
22 Council for malfeasance or nonfeasance of office or for any cause that renders the member ineligible
23 for office or incapable or unfit to discharge the duties thereof. Violation of Section

1 4.66.090(b) of the Lincoln Municipal Code, or any other provision of this chapter, shall be grounds
2 for immediate removal from the Committee.

3 Section 5. That Section 4.66.040 of the Lincoln Municipal Code be amended to read
4 as follows:

5 **4.66.040 Duties and Powers.**

6 As authorized in this chapter, the ~~Board~~ Committee shall advise the City Council on matters
7 relating to financial audits, internal audits, performance audits, and operational reviews as provided
8 for in this chapter. However, the ~~Board~~ Committee shall not review or recommend an audit of the
9 performance of any particular employee and shall not infringe upon the authority of the Personnel
10 Board, Human Resources Director, a Department head, Mayor, or City Council with respect to
11 personnel matters. Nothing in this chapter shall confer upon the ~~Board~~ Committee or the City any
12 authority to audit governmental organizations not otherwise subject to City audit.

13 The City Council shall, by majority vote, select at least one subject for a performance audit by
14 the Committee each year. The Council's decision on at least one such audit subject shall be
15 completed by August 31st.

16 The ~~Board~~ Committee shall have the following responsibilities:

17 (a) The Committee shall develop an annual performance audit program. The Committee's
18 program shall be submitted to the City Council for review and approval.

19 (b) The Committee shall approve annual audit protocols.

20 (c) The Committee shall make recommendations to the Mayor and City Council of changes
21 in the City's financial and management practices.

22 (ad) When directed to do so by resolution of the City Council, determine whether an audit,
23 as suggested in Council's resolution, is appropriate and desirous. In order to make this

1 determination, the ~~Board~~ Committee may consult with departments heads to familiarize themselves
2 with information necessary to make an informed decision on whether and what type of contract audit
3 should be conducted. If the ~~Board~~ Committee determines that such an audit is not appropriate and
4 desirous, the ~~Board~~ Committee shall forward such decision in writing to the City Council.

5 If the ~~Board~~ Committee concludes that such an audit is appropriate and desirous, the
6 ~~Board~~ Committee shall determine what the scope of such audit should be. In recommending the
7 scope of the audit, the ~~Board~~ Committee shall pay particular attention to the anticipated cost to the
8 City for such audit including, but not limited to, the cost of gathering or providing access to records
9 that may be requested by the contract auditor. The ~~Board's~~ Committee's recitation of the scope of
10 the audit shall include:

11 (1) Identification of the auditee including, if applicable, what particular function or
12 activity of the auditee should be audited;

13 (2) Whether the contract audit should be a financial audit, an internal audit, a
14 performance audit, an operational review, or any combination thereof;

15 (3) The time span to be covered by the audit; and

16 (4) Whether the contract auditor should be the State Auditor of Public Accounts, or
17 whether the City should pursue a private contractor to serve as contract auditor.

18 The ~~Board~~ Committee shall transmit the scope of the audit, in writing, to the City
19 Purchasing Agent.

20 (b e) Evaluate the adequacy of management and financial accounting systems and controls
21 based on the final audit report and any written response thereto furnished by the auditee;

22 (c f) Appraise and verify the accuracy of management and financial records, statements and
23 reports based on the final audit report and any written response thereto furnished by the auditee;

1 (d g) Report to the Mayor and the City Council, in the form of a ~~board~~ Committee audit
2 report, within sixty days of receiving the final audit report. The ~~Board~~ Committee audit report shall
3 be simultaneously transmitted to the Mayor and the City Council. Three copies of the ~~Board~~
4 Committee audit report shall be placed on file with the City Clerk for public examination. The ~~board~~
5 Committee audit report shall include:

6 (1) The ~~Board's~~ Committee's findings, based on the final audit report and the response
7 of the auditee as to whether:

8 (i) Activities and programs are being conducted and funds expended in
9 compliance with applicable laws;

10 (ii) Revenues are being properly collected, deposited and accounted for;

11 (iii) Resources are adequately safeguarded, controlled and used in an effective and
12 efficient manner; and/or

13 (iv) There are adequate operating and administrative procedures and practices,
14 systems or accounting internal control systems and internal management controls which have been
15 established by management;

16 (2) A copy of the final audit report and auditee's response thereto;

17 (3) A separate listing, if any, of irregularities or failures to comply with legal or
18 administrative policies; and

19 (4) The ~~Board's~~ Committee's recommendations.

20 Section 6. That Section 4.66.050 of the Lincoln Municipal Code be amended to read
21 as follows:

1 **4.66.050 Meetings and Rules.**

2 The Chair shall conduct meetings of the ~~Board~~ Committee. Such meetings shall be subject to
3 the open meetings laws of the City Charter and statutes of the State of Nebraska. The ~~Board~~
4 Committee shall ~~meet as necessary to conduct its business~~ hold regular meetings on a minimum of
5 a quarterly basis. The ~~Board~~ Committee shall keep minutes of its meetings which shall document
6 all resolutions, motions, and determinations of the ~~Board~~ Committee and shall be kept on file in the
7 office of the City Clerk.

8 A quorum of the ~~Board~~ Committee shall be ~~four~~ three members. ~~Four~~ Three affirmative votes
9 are required for any final action of the ~~Board~~ Committee.

10 The ~~Board~~ Committee may adopt such rules, bylaws, and procedures as it deems appropriate
11 to carry out the purposes and goals of this chapter, in accordance with the City Charter, Lincoln
12 Municipal Code, and relevant state or federal law.

13 Section 7. That Section 4.66.060 of the Lincoln Municipal Code be amended to read
14 as follows:

15 **4.66.060 Board Committee Staff.**

16 ~~Clerical assistance shall be provided to the Board at City cost as deemed necessary by the~~
17 ~~Mayor.~~

18 The legal advisor to the ~~Board~~ Committee shall be the City Attorney.

19 Department heads and their designees shall cooperate with the ~~Board~~ Committee in order that
20 the ~~Board~~ Committee may carry out its duties. In the event the ~~Board~~ Committee requests
21 information which would not be mandatorily disclosed pursuant to a public records request, the
22 department head or designee shall refrain from providing such information at that time and shall

1 consult with the City Attorney and the Mayor. The Mayor shall determine what records or
2 information shall be provided in response to the ~~Board's~~ Committee's request.

3 Section 8. That Section 4.66.070 of the Lincoln Municipal Code be amended to read
4 as follows:

5 **4.66.070 Contract Auditors.**

6 Contract auditors may not have a financial interest in the affairs of the auditee or the City, or
7 its officers, ~~nor result in any benefits in the financial affairs of or~~ members of the Board Committee.

8 The contract with the contract auditor shall include language requiring the contract auditor to
9 retain all working papers or other documents gathered or created in the course of conducting the
10 audit for a period of ten years. During and after that ten-year period, the contract auditor may not
11 disseminate such information except as required by law. The contract shall further require that upon
12 receipt of a request for such information, in the form of a public record request, subpoena, or
13 otherwise, the contract auditor shall, within one working day of receiving such request, forward such
14 request to the City Attorney and shall not fulfill the request. At the end of the ten years, the contract
15 auditor shall destroy all such documents, working papers, and information, in whatever form, by
16 shredding, incinerating, wiping, or otherwise rendering such data unrecoverable, and shall confirm
17 such destruction in writing to the City Clerk; provided, however, that the City may require an
18 extension of the ten-year period as may be reasonable prior to destruction of the material. Nothing
19 in this section is intended to prohibit the contract auditor and the City from agreeing to reasonable
20 terms for access to such data by the City.

21 The contract shall also include language requiring that the contract audit be performed in
22 accordance with the industry standard for the type of audit that is the subject of the contract audit.
23 A contract for a performance audit or financial audit shall include language that such audit be
24 performed in accordance with the Generally Accepted Government Auditing Standards. A contract
25 for an internal audit shall contain language that such audit be performed in accordance with the
26 Standards for the Professional Practice of Internal Auditing as promulgated by the Institute of
27 Internal Auditors.

1 The contract with the contract auditor shall require the contract auditor to prepare a final audit
2 report and to simultaneously furnish such report to the ~~Board~~ Committee, the auditee, the Mayor, and
3 City Council.

4 The contract with the contract auditor shall include language which identifies the scope of the
5 audit and which specifies the auditee. The contract shall also specify the type of audit to be
6 performed under this chapter.

7 Section 9. That Section 4.66.090 of the Lincoln Municipal Code be amended to read
8 as follows:

9 **4.66.090 Records.**

10 (a) The custodian of records for all records received or created by the ~~Board~~ Committee
11 shall be the City Clerk.

12 (b) Neither the ~~Board~~ Committee nor any member thereof shall, by their own initiation or
13 pursuant to a request, release, disclose, disseminate, or otherwise provide any document, record, or
14 material in whatever form, except as required in this chapter. Any and all requests made of the
15 ~~Board~~ Committee or a ~~Board~~ Committee member for such material shall, within one day of receipt
16 of a request, be forwarded to the City Attorney.

17 Section 10. That Section 4.66.100 of the Lincoln Municipal Code be amended to read
18 as follows:

19 **4.66.100 Access to Information.**

20 (a) All officers and employees of the City of Lincoln shall, upon request by a contract
21 auditor, furnish access to all documents, records, or materials of or belonging to the City of Lincoln,
22 or copies thereof, regardless of the form in which they were created or stored, within the custody of
23 or under the control of the officer or employee. In the event the officer or employee of the City
24 believes that furnishing particular access to the contract auditor would violate an applicable policy

1 or law of the City, including policies relating to the dissemination of information, or would conflict
2 with federal or state law, such officer or employee shall refrain from providing access to the contract
3 auditor and shall immediately notify his or her department head and the City Attorney of the request.

4 In the event the City Attorney believes that provision of the requested information would
5 violate a City policy or applicable city, state, or federal rule, regulation or law, or if the City Attorney
6 believes the requested information is subject to withholding under the Public Records Act or that the
7 City is prohibited from making the requested disclosure, the City Attorney shall indicate as much
8 in writing to the contract auditor and such information shall be disclosed to the contract auditor in
9 a de-identified or redacted form. If the information provided by the City Attorney is not acceptable
10 to the contract auditor, the contract auditor may notify the Mayor that there is a question as to what
11 information should be made accessible and the Mayor, in consultation with the City Attorney, shall
12 determine what records or information shall be provided to the contract auditor.

13 (b) ~~Beginning January 1, 2008, a~~All contracts ~~subsequently~~ entered into by the City for the
14 purchase of services or goods shall contain language requiring that such contractor make available
15 to a contract auditor copies of all financial and performance related records and materials germane
16 to the city contract, as allowed by law.

17 (c) In addition to other restrictions on the dissemination of working papers and documents
18 provided elsewhere in this chapter, neither the contract auditor nor the ~~Board~~ Committee or any
19 individual member thereof may disclose any information received during an audit that is considered
20 proprietary in nature or confidential by any local, state, or federal law or regulation.

21 Section 11. That Section 4.66.110 of the Lincoln Municipal Code be amended to read
22 as follows:

23 **4.66.110 Auditee's Response.**

1 The auditee shall have thirty days after receipt of the final audit report to provide the ~~Board~~
2 Committee with a written response to such final audit report. The auditee's response shall include:

- 3 (a) Whether the auditee agrees or disagrees with the final audit report;
- 4 (b) Reasons for any disagreement with the final audit report;
- 5 (c) Recommendations or plans for implementing solutions to issues identified in the final
6 audit report as requiring attention;
- 7 (d) A reasonable time table for the completion of such activities;
- 8 (e) A reasonable estimate of the costs associated with completion of such activities.

9 Section 12. That Section 4.66.120 of the Lincoln Municipal Code be amended to read
10 as follows:

11 **4.66.120 Selecting a Contract Auditor; Process.**

12 (a) Upon receipt of an audit scope from the ~~Board~~ Committee, if the ~~Board~~ Committee
13 recommended pursuing a contract with the State Auditor of Public Accounts (State Auditor), the
14 Purchasing Agent shall contact the State Auditor and negotiate a contract to perform the audit as
15 scoped by the ~~Board~~ Committee. Upon reaching agreement on contract terms with the State Auditor,
16 the Purchasing Agent shall forward such proposed contract to the City Council for action along with
17 a recommendation of approval or rejection. If the Purchasing Agent is unable to reach agreement
18 with the State Auditor as to the terms of a contract, or if the State Auditor is unwilling or unable to
19 serve as contract auditor, the Purchasing Agent shall report as much to the ~~Board~~ Committee ~~and~~
20 ~~selection committee~~. The ~~selection~~ eCommittee shall then review the audit scope ~~prepared by the~~
21 ~~Board~~ and determine whether:

- 22 (1) Such proposed audit shall be abandoned; or

1 (2) Such proposed audit shall be pursued in accordance with (b) below, in which case
2 the ~~selection~~Committee shall forward the audit scope to the Purchasing Agent with directions that
3 the Purchasing Agent proceed in accordance with (b), below; or

4 (3) Such proposed audit shall be further pursued with the State Auditor, in which case
5 the ~~selection~~Committee shall direct the Purchasing Agent to reopen negotiations with the State
6 Auditor.

7 (b) Upon receipt of the audit scope from the ~~Board~~ Committee, or pursuant to (a)(2), above,
8 the Purchasing Agent shall proceed in accordance with either b(1) or b(2) below, depending upon
9 the anticipated cost of the contract audit at issue. The anticipated cost means the total amount to be
10 paid the contract auditor, and does not include the cost to the City of submitting to the contract audit.

11 (1) If the anticipated cost of the contract audit is less than \$30,000.00, the Purchasing
12 Agent shall secure and record at least three informal quotes, if practical, from persons qualified to
13 perform the contract audit. The Purchasing Agent shall rank the responders based on their overall
14 ability to perform the contract audit; performance record for timeliness; performance record for
15 compliance with this code; reputation for professionalism; current workload with the City; any other
16 specialized qualification which a responder might possess which would be of benefit to the project,
17 such as familiarity with the particular activity being audited; and cost of services.

18 The Purchasing Agent shall negotiate a contract with the first ranked responder,
19 consistent with the scope provided by the ~~Board~~ Committee. The negotiated contract, which shall
20 be signed by the would-be contract auditor, shall be forwarded to the City Council for consideration.

21 (2) If the anticipated cost of the contract audit is greater than \$30,000.00, the Purchasing
22 Agent shall prepare and advertise a request for proposals for publication. Upon receipt of valid
23 responses to the request for proposals, the Purchasing Agent shall forward such responses to the

1 ~~selection~~ cCommittee. The Chair of the City Council shall provide copies of the responses to
2 members of the ~~selection~~ cCommittee. No member of the ~~selection~~ cCommittee shall further
3 disseminate such responses, or otherwise disclose the contents of such responses until such time as
4 a contract for the anticipated audit has been either accepted or rejected by the City Council as a
5 whole.

6 (c) Upon receipt of the proposals pursuant to (b)(2) above, the ~~selection~~ cCommittee shall
7 evaluate the proposals, negotiate with the responders as necessary, and select the proposal which best
8 serves the City's interests. The ~~selection~~ cCommittee shall forward the selected proposal and
9 contract terms to the City Council for action. If the ~~selection~~ cCommittee does not believe any of
10 the proposals meet the needs of the City, ~~they~~ it may forward all proposals to the City Council with
11 a written recommendation that all proposals be rejected.

12 Section 13. That Sections 4.66.020, 4.66.030, 4.66.040, 4.66.050, 4.66.060, 4.66.070,
13 4.66.090, 4.66.100, 4.66.110, and 4.66.120 of the Lincoln Municipal Code as hitherto existing be
14 and the same are hereby repealed.

15 Section 14. Pursuant to Article VII, Section 7 of the City Charter, this ordinance shall
16 be posted on the official bulletin board of the City, located on the wall across from the City Clerk's
17 office at 555 S. 10th Street, in lieu of and in place of newspaper publication with notice of passage
18 and such posting to be given by publication one time in the official newspaper by the City Clerk.
19 This ordinance shall take effect and be in force from and after its passage and publication as herein
and in the City Charter provided.

Introduced by:

15-53

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2015:

Mayor